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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,888	02/26/2002	Roger E. Billings	9817-06	3206

7590 04/29/2004  
Eric K. Satermo  
P.O. Box 19099  
Irvine, CA 92623-9099

EXAMINER
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LUU, LE HIEN

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 04/29/2004

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/082,888

Applicant(s)

BILLINGS ET AL.

Examiner

Le H Luu

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02/26/2002 to 07/22/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 10, 11 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 10, 11 and 14-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. Claims 3, 10-11, and 14-19 are presented for examination.
2. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,761,433, claims 1-4 of U.S. Patent No. 5,793,981, claims 1-19 of U.S. Patent No.

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6,061,703, claims 1-39 of U.S. Patent No. 6,076,117, and claims 1-6 of U.S. Patent No. 6,115,747. Although the conflicting claims are not identical, they are not patentably distinct from each other because the context of the claimed invention is the same as the context of the cited claims of the U.S. patents.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 depends on claim 9 which has been canceled by applicant.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless—

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 3 and 10 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by **Picazo, Jr. et al. (Picazo)** patent no. **5,432,907**.

8. As to claim 10, Picazo teaches the invention as claimed, including a method for communicating data in a network including stations connected in a chain with a last station, the method comprising:

sequentially routing data from a station to the last station (FIG 1; col. 15 line 66 - col. 16 line 3, token ring LAN 1);

broadcasting data sequentially routed to the last station to the stations (FIG 1; col. 16 lines 6-9, Ethernet LAN 2).

9. As to claim 3, Picazo teaches the invention as claimed, including a method for communicating data in a network including workstations and file servers, the workstations being connected in a chain and having a first workstation and a last workstation, the method comprising:

sequentially routing data issued by a workstation through the last workstation (FIGs 1-2; col. 15 line 66 - col. 16 line 3, token ring LAN 1);

broadcasting data sequentially routed through the last workstation to the file servers (FIGs 1-2; col. 16 lines 6-9, Ethernet LAN 2; col. 1 lines 8-20; mainframe computers 16 and 18); and

broadcasting data issued by the file servers to the workstations on respective broadcast channels (FIGs 1-2; col. 16 lines 6-9, Ethernet LAN 2; col. 1 lines 8-20; mainframe computers 16 and 18).

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 14-19 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over **Picazo, Jr. et al. (Picazo)** patent no. **5,432,907**, in view of **Geyer et al. (Geyer)** patent no. **4,932,023**.

12. As to claim 14, Picazo teaches the invention substantially as claimed, including a method for communicating data packets in a network including computers connected to a hub by a delivery channel and a broadcast channel, the method comprising:

generating data packets by the computer (col. 7 line 64 - col. 8 line 9);

transmitting the data packets to the hub via the delivery channel (col. 7 line 64 - col. 8 line 9; col. 15 line 54 - col. 16 line 11);

receiving the data packets at the network hub (col. 7 line 64 - col. 8 line 9; col. 15 line 54 - col. 16 line 11);

broadcasting the stream of data packets to computers via the broadcast channel (col. 8 lines 3-9).

However, Picazo does not explicitly teach merging the data packets into a stream of data packets.

Geyer teaches transmitting multiple frames on a network simultaneously without idle characters filling in between (col. 2 lines 25-51).

It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Picazo and Geyer to merge the data packets into a stream of data packets as taught by Geyer because it would improve network performance.

13. As to claim 15, Geyer teaches storing the data packets prior to merging the data packets (col. 2 lines 25-51).

14. As to claim 16, Picazo teaches amplifying the stream of data packets prior to broadcasting (col. 8 lines 3-9).

15. As to claim 17, Picazo teaches receiving a remote stream of data packets at the hub via another delivery channel; and broadcasting the remote stream of data packets to the computers via another broadcast channel (col. 7 line 53 - col. 8 line 28).

16. As to claim 18, Picazo teaches transmitting the stream of data packets to another hub (col. 7 lines 53-63).

17. As to claim 19, Picazo and Geyer teaches receiving a remote stream of data packets at the hub via another delivery channel; merging the remote stream of data packets with the stream of data packets; and broadcasting the merged stream of data packets to the computers via the broadcast channel (Picazo, col. 7 line 53 - col. 8 line 28; Geyer, col. 2 lines 25-51).

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu, whose telephone number is (703) 305-9650. The examiner can normally be reached Monday through Friday from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached at (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for formal communications; please mark  
"EXPEDITED PROCEDURE").

Or:

(703) 872-9306 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).



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A handwritten signature in black ink, appearing to read 'Le Hien Luu', written over a horizontal line.

LE HIEN LUU  
PRIMARY EXAMINER

April 26, 2004